HO YOKE KENG v. PHILIP LAU SOO FOCK & ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA
MOHAMAD ZABIDIN MOHD DIAH JCA
NORDIN HASSAN JCA
GHAZALI CHA JCA
[CIVIL APPEAL NOS: B-01(NCvC)(A)-10-01-2021
& B-01(NCvC)(A)-19-01-2021]
8 APRIL 2022

Abstract – *When the lease of a land ends, the land is reverted to the State Authority and no one can claim any rights to the land unless the State Authority renews the said lease. A beneficiary cannot claim the rights of a share of the land upon the expiration of such lease.*

LAND LAW: *Lease – Renewal – Lessee passed away and half undivided share of land registered under name of administrator of deceased estate – Beneficiary of other half share of land applied to be granted half ownership of land and to set aside granting of lease – Whether beneficiary had rights or entitled to half undivided share of land – Whether Pentadbir Tanah Daerah empowered to revoke approval for renewal of lease of land – Whether Pentadbir Tanah Daerah had power under law to approve application for renewal of lease – National Land Code, ss. 40, 41, 42 & 78(3)*

There were two appeals arising from the High Court decision in allowing the respondent's ('first defendant') originating summons ('OS') for, amongst others, the following reliefs: (i) an order that the transfer of the half undivided share in a parcel of land to Ho Yoke Kheng ('fourth defendant') was unlawful without the knowledge of the first defendant; (ii) that the fourth defendant surrender the title of the land to the Pentadbir Tanah Daerah Hulu Langat ('fifth defendant'); and (iii) that the fifth defendant cancel the memorial on the title in respect of the half undivided share of the land and register the same in the fourth defendant's name. The events that led to the present appeal were: (i) in 1976, the land was alienated to one Yap Chin Moy, the mother of Philip Liau ('plaintiff'), and Wan Hang Moi @ Woon Hey Moy, the mother of the first to third defendants with half undivided share each. The land was for a lease of 30 years and ended on 18 July 1985; (ii) in 2006, Wan Hang Moi applied to the State Authority for a new lease and was granted with a lease of 60 years. The lease granted to Wan Hang Moi was for the whole land while Yap Chin Moy was not named as half share-holder of the land; (iii) Wan Hang Moi passed away in 2007 and the land was then registered under the name of the first to third defendants as the administrator of the

deceased estate until the ownership of the land was transferred to them in 2011; and (iv) Yap Chin Moy passed away in 2010. The plaintiff filed an OS at the High Court to be granted half ownership of the land and to set aside the granting of the lease of the land to the first to third defendants. The OS was dismissed but on appeal, the Court of Appeal allowed the plaintiff's appeal and ordered the lease of the land to the first to third defendants be set aside and the fifth defendant to consider the application for renewal of the lease by the plaintiff and the first to third defendants ('COA order'). Subsequent to the Court of Appeal decision, the plaintiff and the first to third defendants filed an application to the fifth defendant for the surrender and re-alienation of the land. The fifth defendant informed the plaintiff and the first to third defendants that their application had been approved. However, the fifth defendant later revoked the approval and the plaintiff was required to obtain a court order in respect of the plaintiff's interest in the land. This was not done by the plaintiff. The plaintiff made a search at the Pendaftar Hakmilik Negeri Selangor ('sixth defendant') office and found out that the whole land was re-alienated by the fifth defendant to the first to third defendants and subsequently, the land was sold to the fourth defendant. The plaintiff entered a private caveat on the land and thereafter filed the OS. In this appeal, the issues that arose were: (i) whether the COA order recognised that the plaintiff had the rights or was entitled to the half undivided share of the land; (ii) whether the fifth defendant was empowered to revoke the approval for the renewal of the lease of the land granted to the plaintiff and the first to third defendants; (iii) whether the fifth defendant had the power to approve the first to third defendants' application for the renewal of the lease of the whole land; (iv) whether the fourth defendant was a *bona fide* purchaser and the transfer of the land to the fourth defendant was lawful; (v) whether the plaintiff had *locus standi* in filing and seeking the relief in the OS; and (vi) whether the plaintiff's action in the OS was barred by the principle of *res judicata*.

Held (allowing appeals)

Per Nordin Hassan JCA delivering the judgment of the court:

(1) The COA order was plain and clear that (i) the granting of the lease to the first, second and third defendants by the fifth defendant was set side; and (ii) the fifth defendant was ordered to consider the application of the plaintiff and the first to third defendants to renew the lease of the land. Here, it was an undisputed fact that the plaintiff had filed an application for the renewal of the lease and was granted by the fifth defendant to the plaintiff and the first to third defendants. The fifth defendant had complied with the COA's order. Nowhere in the COA order was it stated or recognised that the plaintiff had the rights to the half undivided share of the land. This was also consistent with the law that the power to alienate the land was with the State Authority, as provided under ss. 40, 41 and 42 of the National Land Code ('NLC'). (paras 20-23)

(2) When the 30 years lease of the land ended on 18 July 1985, the land was reverted to the State Authority and no one can claim any rights to the land unless, as in the present case, the State Authority renews the said lease. As the beneficiary of his mother, the plaintiff clearly could not claim the rights of the half undivided share of the land upon the expiration of the lease on 18 July 1985. From the date onwards, the land belonged to the State. Therefore, the High Court Judge ('HCJ') erred in finding that the COA's order conferred the plaintiff the rights to the half undivided share of the land. (paras 25 & 27)

(3) The approval for renewal of the lease was granted to the plaintiff and the first to third defendants. However, the land had not been registered under their names. As such, the fifth defendant was entitled to revoke the approval as empowered under s. 78(3) of the NLC. The HCJ erred in his finding that the fifth defendant was not empowered to revoke the approval granted. As the land belonged to the State, the fifth defendant was empowered to approve the first to third defendants' application for the renewal of the lease of the whole land. Further, as the registered owner of the land, the sale of the land by the first to third defendants to the fourth defendant was valid and lawful. (paras 32 & 33)

(4) There were no special circumstances for the plaintiff to commence the action as the beneficiary of the late Yap Chin Moy without the letter of administration to be the legal representative of the estate. The plaintiff therefore had no *locus standi* to commence the said action. On the issue of *res judicata*, although the High Court had decided to dismiss the plaintiff's application, however, the decision was overturned by the Court of Appeal and the plaintiff's subsequent action was based on the decision of the Court of Appeal. Therefore, the principle of *res judicata* was not applicable in the present case. (paras 46 & 48)

Case(s) referred to:

Al Rashidy Kassim & Ors v. Rosman Roslan [2007] 3 CLJ 361 FC ***(refd)***

Dato' Hj Jahaya Ibrahim v. Kerajaan Negeri Selangor & Ors [2018] 1 LNS 284 HC ***(refd)***

Dato' Ramesh Rajaratnam v. Datin Zaleha Abd Rahman & Ors [2014] 5 CLJ 669 CA ***(refd)***

Deraman & Ors v. Mek Yam [1976] 1 LNS 20 FC ***(refd)***

Lai Wooi Giap v. Rosli Zakaria & Anor [2020] 7 CLJ 477 CA ***(refd)***

North East Plantations Sdn Bhd lwn. Pentadbir Tanah Daerah Dungun & Satu Lagi [2011] 4 CLJ 729 FC ***(refd)***

Pembinaan Batu Jaya Sdn Bhd v. Pengarah Tanah Dan Galian Selangor & Anor [2013] 10 CLJ 570 HC ***(refd)***

Legislation referred to:

National Land Code, ss. 40, 41, 42, 46, 78(3)

(Civil Appeal No: B-01(NCvC)(A)-10-01-2021)
For the appellant - Lee Hong Yap; M/s HY Lee & Co

(Civil Appeal No: B-01(NCvC)(A)-19-01-2021)
For the appellants - Ivan Ho Tiong Yin & Lim Khey Hoong; M/s Lim Khey Hoong & Partners
For the respondent in both appeals - Kirubakaran, Kunasegaran Maniveloo & Cheong Jun Yeng; M/s Kuna & Co

[Editor's note: Appeal from High Court, Shah Alam; Originating Summons No: BA-24NCvC-593-07-2020 (overruled).]

Reported by Lina E

JUDGMENT

Nordin Hassan JCA:

[1] There are two appeals in the present case arising from the High Court's decision in allowing the respondent's Originating Summons No. BA-24NCVC-593-07-2020 for amongst others, the following reliefs:

(i) an order that the transfer of 1/2 undivided share in a parcel of land known as HS(D) 137017, Lot 1294, PT 70831, Bandar Kajang, Daerah Hulu Langat Selangor ("the land") to Ho Yoke Kheng is unlawful without the knowledge of the respondent;

(ii) that Ho Yoke Kheng surrender the title of the land to the Pentadbir Tanah Daerah Hulu Langat; and

(iii) that the Pentadbir Tanah Daerah Hulu Langat cancel the memorial on the title in respect of the 1/2 undivided share of the land and register the same in the respondent's name.

[2] Parties will be referred to in this judgment as they were in the High Court which was as follows:

(i) Philip Liau Sook Fock, the plaintiff;

(ii) Tan Yoke Kheong, the first defendant;

(iii) Tan Yoke Kwee, the second defendant;

(iv) Tan Kim Lian, the third defendant;

(v) Ho Yoke Keng, the fourth defendant;

(vi) Pentadbir Tanah Daerah Hulu Langat, the fifth defendant; and

(vii) Pendaftar Hakmilik Negeri Selangor, the sixth defendant.

[3] Appeal No. B-01(NCVC)(A)-10-01-2021 is the appeal filed by the fourth defendant whilst Appeal No. B-01(NCVC)(A)-19-01-2021 is the appeal filed by the first, second and third defendants.

The Background Facts

[4] The land, known as HS(D) 137017, Lot 1294, PT 70831, Bandar Kajang, Daerah Hulu Langat Selangor is the subject matter of the dispute by the parties in the present case.

[5] On 21 July 1976, the land was alienated to Yap Chin Moy, the mother of the plaintiff, and Wan Hang Moi @ Woon Hen Moy the mother of first, second and third defendants with 1/2 undivided share each. The land was for a lease period of 30 years. The lease ended on 18 July 1985.

[6] On 14 July 2006, Wan Hang Moi applied to the State Authority for a new lease of the land and was granted on 6 February 2008 with a period of lease of 60 years from 5 January 2009 until 4 January 2069. The lease granted to Wan Hang Moy was for the whole land. Yap Chin Moy was not named as 1/2 shareholder of the land.

[7] On 10 July 2007, Wan Hang Moi passed away and the land was then registered under the name of the first, second, third defendants as the administrator of the deceased estate until the ownership of the land was transferred to them on 21 March 2011.

[8] On 19 October 2010, Yap Chin Moy, plaintiff's mother passed away.

[9] On 23 March 2012, plaintiff filed an originating summon at the Shah Alam High Court to be granted half ownership of the land and to set aside the granting of the lease of the land to the first, second and third defendants. The originating summons was dismissed but on appeal, the Court of Appeal on 23 April 2014 allowed the plaintiff's appeal and ordered the lease of the land to the first, second and third defendants be set aside and the fifth defendant to consider the application for renewal of the lease by plaintiff, and first, second and third defendants. The Court of Appeal's order is as follows:

> (a) Rayuan dibenarkan dengan **mengenepikan pemberian pajakan kepada Responden Pertama, Kedua dan Ketiga.**
>
> (b) Responden Keempat **mempertimbangkan permohonan pembaharuan pajakan oleh Perayu dan permohonan Responden Pertama, Kedua dan Ketiga.** (emphasis added)

[10] "Responden pertama, kedua dan ketiga" in the Court of Appeal's order are the first, second and third defendants, whilst "responden keempat" is the fifth defendant in the present case.

[11] Subsequent to the Court of Appeal decision, plaintiff, the first, second and third defendants filed an application to the fifth defendant for the surrender and re-alienation of the land.

[12] By letter dated 7 January 2016, the fifth defendant informed the plaintiff, first, second and third defendants that their application has been approved and thereafter, issued a notice under Form 5A dated 17 February 2016, for them, to pay the premium and other charges in the sum of RM42,177.10.

[13] Next, on 28 March 2016, a meeting was held between the representative of the fifth defendant and the plaintiff, first, second and third defendants with the presence of YB Ean Yong Hian Wah, the then Selangor State Exco Member, to discuss the issue of the surrender and re-alienation of the land. It was agreed in this meeting that the payment *vide* Form 5A issued by the fifth defendant be postponed to enable the fifth defendant to carry out further investigation.

[14] However, by letter dated 5 September 2017, the fifth defendant informed the applicants that the approval for the new lease given by letter dated 17 February 2016 has been revoked, and plaintiff was required to obtain a court order in respect of the plaintiff's interest in the land. This was not done by plaintiff.

[15] On 11 June 2019, plaintiff made a search at the sixth defendant's office and found out that the whole land was re-alienated by the fifth defendant to the first, second and third defendants and subsequently the land was sold to the fourth defendant.

[16] Plaintiff then entered a private caveat on the land on 3 January 2020 and thereafter filed the originating summons at the High Court Shah Alam, Selangor.

The Decision Of The High Court

[17] The High Court Judge allowed the plaintiff's originating summons and in His Lordship's grounds of judgments, the following reasons were given:

(i) the fifth defendant had failed to comply with the decision of the Court of Appeal dated 23 April 2014 that set aside the earlier lease granted to the first, second and third defendant;

(ii) plaintiff has the rights to the 1/2 undivided share of the land by virtue of plaintiff's mother, Yap Chin Moy's earlier rights to the 1/2 undivided shares of the land;

(iii) as plaintiff's mother has the rights to the 1/2 undivided shares of the land, the alienation of the whole land to Wan Hang Moi, the mother of the first, second and third defendants is invalid. Consequently, the transfer of the whole land by Wan Hang Moi to the first, second and third defendants was equally invalid;

(iv) the first, second and third defendants only have the rights to the 1/2 undivided shares of the land; and

(v) the sale of the whole land to the fourth defendant is invalid.

The Issues Raised Before This Court

[18] The issues for determination of this court are as follows:

(i) whether the decision of the Court of Appeal on 23 April 2014 recognised that plaintiff has the rights or is entitled to the 1/2 undivided share of the land.

(ii) whether the fifth defendant was empowered to revoke the approval for the renewal of the lease of the land granted to the plaintiff, first, second and third defendants on 5 January 2016 and were informed by letter dated 7 January 2016.

(iii) whether the fifth defendant has the power under the law to approve the first, second and third defendants' application for the renewal of the lease of the whole land.

(iv) whether the fourth defendant is a *bona fide* purchaser and the transfer of the land to the fourth defendant was lawful.

(v) whether plaintiff had *locus standi* in filing and seeking the relief in the originating summons.

(vi) whether plaintiff's action in the originating summons is barred by the principle of *res judicata*.

Analysis And Decision Of This Court

Issue Whether The Court Of Appeal's Decision On 23 April 2014 Recognised That Plaintiff Has The Rights To The ½ Undivided Share Of The Land

[19] On this issue, it is pertinent to reproduce the Court of Appeal's order dated 23 April 2014 which is as follows:

(a) Rayuan dibenarkan dengan **mengenepikan pemberian pajakan kepada Responden Pertama, Kedua dan Ketiga.**

(b) Responden Keempat **mempertimbangkan permohonan pembaharuan pajakan oleh Perayu dan permohonan Responden Pertama, Kedua dan Ketiga.** (emphasis added)

[20] The order of the Court of Appeal stated above is plain and clear that, first, the granting of the lease to first, second and third defendants by the fifth defendant is set aside and secondly, the fifth defendant is ordered to consider the application of the plaintiff, first, second and third defendants to renew the lease of the land.

[21] Here, it is an undisputed fact that plaintiff had filed an application for the renewal of the lease and was granted by the fifth defendant to plaintiff, first, second and third defendants which were informed by letter dated 7 January 2016. The fact that the fifth defendant had considered the said application and approved the same is reflected in para. 3 of plaintiff's affidavit in support dated 24 June 2020 which states:

> 3. Selepas keputusan Mahkamah Rayuan tersebut, saya telah membuat permohonan untuk serah balik dan pemberi milikan semula hartanah tersebut di pejabat Defendan Kelima di mana melalui surat bertarikh 7/1/2016 saya dimaklumkan oleh Defendan Kelima bahawa permohonan saya tersebut telah pun diluluskan pada 5/1/2016 dan notis bayaran premium dan lain-lain akan dikeluarkan kelak. Sesalinan surat bertarikh 7/1/2016 dikemukakan dan ditandakan sebagai eksibit "PLSF-5".

[22] In this regard, we find that the fifth defendant had complied with the Court of Appeal's order for the fifth defendant to consider the application of the plaintiff, first, second and third defendants for the renewal of the lease of the land.

[23] We agree with counsel for the defendants that nowhere in the Court of Appeal's order states or recognises that plaintiff has the rights to the 1/2 undivided share of the land. This is also consistent with the law that the power to alienate the land is with the State Authority as provided under ss. 40, 41 and 42 of the National Land Code ("the NLC") which states:

> **Section 40.**
>
> **There is and shall be vested solely in the State Authority the entire property in:**
>
> (a) **all State land within the territories of the State;**
>
> (b) all minerals and rock material within or upon any land in the State the rights to which have not been specifically disposed of by the State Authority.
>
> **Section 41.**
>
> Without prejudice to its powers and rights under any other written law for the time being in force, **the State Authority shall have**:
>
> (a) **all the powers of disposal conferred by section 42 with respect to:**
>
> (i) **property vested in it under section 40;**
>
> (ii) **reserved land;** and
>
> (iii) **mining land,**
>
> which powers shall be exercised in such manner and to such extent as is authorised by this Act, and not otherwise; and
>
> (b) all the rights in reversion and other similar rights conferred on it by section 46.

Section 42.

(1) Subject to subsection (2), **the State Authority shall have power under this Act:**

(a) **to alienate State land in accordance with section 76;**

(b) **to reserve State land, and grant leases of reserved land,** in accordance with the provisions of Chapter 1 of Part Four;

(c) to permit the occupation of State land, reserved land and mining land under temporary occupation licences issued in accordance with the provisions of Chapter 2 of Part Four;

(d) to permit the extraction and removal of rock material from any land, other than reserved forest, in accordance with the provisions of Chapter 3 of Part Four;

(e) to permit the use of air space on or above State land or reserved land in accordance with the provisions of Chapter 4 of Part Four provided that such air space shall be within the confines of a structure of any description erected thereon.

(emphasis added)

[24] In the case of *Pembinaan Batu Jaya Sdn Bhd v. Pengarah Tanah Dan Galian Selangor & Anor* [2013] 10 CLJ 570; [2014] 7 MLJ 526, Vernon Ong J (as he then was, now FCJ) reiterated the power of the State Authority under s. 40 of the NLC in the following manner:

> [31] According to the NLC, *the prerogative power over State land within the territories of the State, including the power of alienation is vested solely in the State Authority (s 40). The power to alienate State land is subject to the conditions relating to the tenure of the land to be alienated; whether a term in perpetuity (freehold) or for a term not exceeding 99 years (leasehold).* The other conditions relate to the amount of premium payable, annual rent, category of land use, and such other conditions or restrictions as may be imposed (ss. 42 and 76).
>
> (emphasis added)

[25] Further, when the 30 years lease of the land ended on 18 July 1985, the land is reverted to the State Authority and no one can claim any rights to the land unless, as in the present case, the State Authority renews the said lease. As the beneficiary of his mother, Yap Chin Moy, plaintiff clearly cannot claim the rights of the 1/2 undivided share of land upon the expiration of the lease on 18 July 1985. From this date onwards, the land belongs to the State. This is provided under s. 46 of the NLC as follows:

Section 46.

(1) Without prejudice to the provisions of any other written law for the time being in force, **alienated land shall revert to and vest in the State Authority** in the following circumstances:

(a) **upon the expiry of the term,** if any, specified in the document of title thereto;

A (b) upon the publication in the *Gazette* of a notice under section 130 (that is to say, a notice published on the making of an order of forfeiture by the Land Administrator on the grounds of non-payment of rent or breach of condition);

(c) in the circumstances mentioned in sections 351 and 352 (which
B relate respectively to the death of a proprietor without successors, and the abandonment of title by proprietors); and

(d) upon the surrender thereof in accordance with the provisions of Part Twelve, and any part of alienated land affected by encroachment by the sea or any river shall revert to and vest in the State Authority in accordance with section 49.

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(2) Without prejudice to the provisions of any other written law for the time being in force, reserved land shall cease to be reserved upon the taking effect in respect thereof of any revocation under section 64.

D (3) **Leases of reserved land,** and licences and permits issued under this Act, **shall terminate at the expiry of the term for which they were granted** or issued, or on the occurrence before that time of any event specified in that behalf in the lease, licence or permit, or in any rule made by the State Authority under section 14; and any licence or permit issued under this Act shall also terminate on the
E death or dissolution, except as provided in section 416, before that time of the person or body for the time being entitled to the benefit thereof. (emphasis added)

[26] The law was correctly stated in the case *Dato' Hj Jahaya Ibrahim v. Kerajaan Negeri Selangor & Ors* [2018] 1 LNS 284; [2018] 8 MLJ 701 as
F follows:

[46] Thus in conclusion and in answer to the issues that are raised in this case, the court finds as follows:

(a) sama ada plaintif berhak untuk didaftarkan sebagai pemilik berdaftar 3/4 bahagian di hak milik tanah pajakan tersebut?

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In respect of this issue, *the court finds that the State Authority is vested with the sole right over all unalienated land in the State as provided in s. 40 of the National Land Code. The court finds it clear and obvious that the plaintiff was no longer registered as the leaseholder of 3/4 of the said land after the period of his lease had expired on 14 July 2005. Section 46 of the*
H *National Land Code provides that alienated land shall revert to and vest in the State Authority, inter alia, upon the expiry of the term specified in the document of title.* As such, the court finds that with effect from 14 July 2005, the said land had reverted back to the State Authority and the plaintiff did not have the right to be registered as the owner of 3/4 of the said land. (emphasis added)

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[27] Therefore, we find the High Court Judge erred in finding that the Court of Appeal's decision on 23 April 2014 confers plaintiff the rights to the 1/2 undivided share of the land.

Issue Whether The Fifth Defendant Was Empowered To Revoke The Approval For The Renewal Of The Lease Of The Land Granted To The Plaintiff, First, Second And Third Defendants On 5 January 2016 And Were Informed By Letter Dated 7 January 2016

[28] It is trite law that land belongs to the State unless it is registered in any person's name, even though approval for the alienation has been granted. This is provided under s. 78(3) of the NLC which states:

Section 78.

(1) The alienation of State land under final title shall be effected in accordance with the provisions of Chapter 3.

(2) The alienation of State land under qualified title shall be effected in accordance with the provisions of Chapter 2 of Part Eleven.

(3) *The alienation of State land shall take effect upon the registration of a register document of title thereto pursuant to the provisions referred to in subsection (1) or (2), as the case may be; and, notwithstanding that its alienation has been approved by the State Authority, the land shall remain State land until that time.* (emphasis added)

[29] The Federal Court in *North East Plantations Sdn Bhd lwn. Pentadbir Tanah Daerah Dungun & Satu Lagi* [2011] 4 CLJ 729 emphasised this principle of law and states as follows:

(iii) Seksyen 78(3) KTN 1965 memperuntukkan seperti berikut:

78(3). The alienation of State land shall take effect upon the registration of a register document of title thereto pursuant to the provisions referred to subsection (1) or (2), as the case may be; and, notwithstanding that its alienation has been approved by the State Authority, the land shall remain State land until that time.

(iv) *Jelas dari peruntukan tersebut di atas bahawa pemberi hakmilikan tanah (alienation of land) hanya berkuatkuasa dengan pendaftaran hakmilik dan sehingga itu tanah tersebut masih kekal milik Kerajaan Negeri walaupun pemberi milikan tanah telah diluluskan oleh Pihak Berkuasa Negeri.*

... *Mengikut pertimbangan kami pemberimilikan lapan lot tanah tersebut yang telah dikeluarkan Borang 5A kepada perayu tidak muktamad dan Kerajaan Negeri berhak membuat keputusan tersebut kerana tanah-tanah itu tidak pernah didaftarkan hakmilik atas nama perayu.* (emphasis added)

[30] Further in para. 14, the Federal Court elaborated on the same issue as follows:

(ii) Kami juga ingin mengulangi kenyataan bahawa selagi ianya (hakmilik) tidak didaftarkan mengikut s. 78(3) KTN, Perayu tidak berhak ke atas lapan lot tanah tersebut. *Memandangkan tanah tersebut masih lagi milik Kerajaan Negeri maka Kerajaan Negeri berhak membatalkan kelulusan yang diberikan dan seterusnya berhak untuk menolak apa-apa pembayaran Borang 5A serta berhak untuk mengarahkan supaya bayaran yang dibuat oleh perayu tidak diterima dan dikembalikan kepada perayu.*

(iii) Perkataan 'shall' yang terdapat di dalam s. 80(3) KTN merupakan prosedur pentadbiran atau 'administrative steps' yang mesti dilaksanakan oleh Pentadbir Tanah selepas kelulusan diberikan oleh Pihak Berkuasa Negeri atau MMKN. Malah perkataan 'shall' juga terdapat didalam ss. 81 hingga 92 KTN. Ini bermakna prosedur yang sama hendaklah diikuti oleh Pentadbir Tanah. Antara lain termasuklah pembayaran Borang 5A, pengukuran tanah, fee yang kena dibayar dan pengeluaran geran hakmilik.

(iv) Namun demikian, pada hemat kami, ini tidak bermakna bahawa MMKN tidak boleh membatalkan kelulusan yang telah diberikan dan apabila kelulusan dibatalkan dan pembayaran Borang 5A tidak diterima maka 'administrative steps' yang dinyatakan didalam ss. 81-92 KTN tidak lagi perlu dipatuhi. (emphasis added)

[31] This principle of law was also reiterated in the case of *Pembinaan Batu Jaya Sdn Bhd* (*supra*) where the judge said this:

[32] *It is provided that the alienation of state land is only complete upon the registration under a register document of title. Further, until such registration is effected, the land approved for alienation remains state land (s. 78(3)).*

[33] In this instance, the land has been approved for alienation but the alienation of the land has not been completed. This is due to the fact that the registration pursuant to s. 78(3) has not been effected; no document of title to the land has been issued to the applicant. *Therefore, notwithstanding the fact that the land has been approved for alienation, the land remains state land. The state authority's power to revoke the alienation has been recognised by our courts* (see *North East Plantations Sdn Bhd v. Pentadbir Tanah Daerah Dungun & Anor* [2011] MLJU 413; [2011] 2 CLJ 392 (CA); [2011] 4 CLJ 729 (FC); *Government of the State of Negeri Sembilan & Anor v. Yap Chong Lan & 12 Ors; Lesco Development v. Yap Chong Lan & 12 Ors* [1984] 2 MLJ 123; [1984] 2 CLJ 150; *Dr Ti Teow Siew & Ors v. Pendaftar Geran-Geran Tanah Negeri Selangor* [1982] 1 MLJ 38; [1981] CLJ (Rep) 142). *In the circumstances, the revocation of the alienation of the land was an act which fell within the exercise of the state authority's powers.* (emphasis added)

[32] In the present case, the approval for renewal of the lease was granted to the plaintiff, first, second and third defendants on 5 January 2016 and they were informed by letter dated 7 January 2016. However, the land has not been registered under their names. As such, the fifth defendant is entitled to revoke the approval as empowered under s. 78(3) of the NLC. Here, we find,

that the High Court Judge erred in his finding that the fifth defendant was not empowered to revoke the approval granted. In the grounds of judgment, the High Court Judge said this:

> [23] Saya dapati Defendan Kelima sama sekali tidak mempunyai apa-apa alasan untuk membatalkan pemberian semula pajakan kepada Plaintif dan Defendan Pertama hingga Ketiga yang telah dimaklumkan kepada mereka. Permohonan sedemikian telah dikemukakan dan Defendan Kelima telah mempertimbangkan permohonan tersebut malah telah meluluskan permohonan tersebut. **Saya telah membuat dapatan di atas kelulusan ini tidak boleh dibatalkan oleh Defendan Kelima kerana tidak terdapat apa-apa alasan yang munasabah.** (emphasis added)

[33] Consequently, as the land belongs to the State, the fifth defendant was empowered to approve the first, second and third defendants' application for the renewal of the lease of the whole land. Further, as the registered owner of the land, the sale of the land by the first, second and third defendants to the fourth defendant for the consideration of RM950,0000 is valid and lawful.

Issue Whether Plaintiff Had Locus Standi In Filing And Seeking The Relief In The Originating Summons

[34] On this issue, counsel for the first, second and third defendants submitted, in essence, that plaintiff has no *locus standi* to file the originating summons as the beneficiary of his mother, Yap Chin Moy, without first obtaining the letter of administration. The Federal Court cases of *Deraman & Ors v. Mek Yam* [1976] 1 LNS 20; [1977] 1 MLJ 52 and *Al Rashidy Kassim & Ors v. Rosman Roslan* [2007] 3 CLJ 361; [2007] 4 MLJ 297 were relied upon to support the contention.

[35] In this regard, it is apposite to refer to the two apex court decisions on this issue. In *Deraman* case (*supra*) this is what Ong Hock Sim FJ said:

> The possessory title can be extinguished under section 10(1)(b), upon proof of entitlement to be registered as proprietor by a claimant challenging the holder of the possessory title. I am doubtful, despite *Fatimah v. Wok* [1964] MLJ 318 and reading the Ordinance as a whole, that it is open to a person who is entitled to appeal under section 16, to retry the issue afresh by instituting action under section 10(1)(a). *That action, in my view, can be taken within 3 years only by a person who had a claim to ownership or interest in the land prior to the date of registration and who had not taken steps to establish such claim before the District Officer.*
>
> *As was pointed out by my brother Ali F.J. the appellants had not taken out representation and had therefore no locus standi to institute the action.*
>
> *I agree with him that this appeal be dismissed and with the order proposed by him.* (emphasis added)

[36] Further, Suffian LP in the same case made the following observation:

> *This appeal is complicated by the fact that before filing suit the plaintiffs had not taken out letters of administration and so have no locus standi,* but nevertheless we are urged to give a ruling on the point decided by the learned trial judge, as there are some 20 similar suits pending the result of this appeal, and what I say below is on the assumption that persons like the plaintiffs here are legal representatives. (emphasis added)

[37] However, in *Al Rashidy*'s case, the Federal Court opined that there is an exception to the principle laid down in *Deraman*'s case, that is if special circumstances can be shown by the party instituting the action without the letter of administration. Here it is pertinent to refer to the principles and guidelines set out by the court as explained by Arifin FCJ which are as follows:

> [9] *In that case what the court said was that the plaintiffs as beneficiaries have no locus to apply to have their names registered as the registered owner of the undivided share in the land. Thus, in deciding whether the appellants have the locus standi or not in instituting this action, it is necessary to determine what is the nature of the appellants' claim.* The appellants pleaded case was that the respondent who is the registered proprietor of 1/2 share in the said land had obtained the said title through fraudulent means. After a full trial, the High Court found that the appellants had proven their case in that the respondent had obtained his title through fraud. This finding of the trial court was upheld by the Court of Appeal. This explains why the Court of Appeal having allowed the appeal by the respondent then ordered that the registrar's caveat be entered against the said land pending disposal of a fresh suit to be filed by the appellants.
>
> ....
>
> [11] In short the appellants were asking for a declaration that the transfer of the ½ undivided share in the said land to the respondents was null and void and illegal on the ground of fraud allegedly committed by the respondent. That was the matter at the heart of the appellants' case. Looking at the pleading the first question that the court ought to ask itself is, 'has the appellants the *locus standi* to institute an action seeking such a declaratory relief?'.
>
> [12] The answer to this issue, as we see it, could not be derived from the decision in *Deraman & Ors v. Mek Yam*. *In that case the appellants/plaintiffs were asking for an order that the 5/10 undivided share in the land be registered in their names as lawful beneficiaries of the estate of Din bin Salleh. This court held that the beneficiaries had no locus standi to bring such a proceeding to have the title in the said land registered in their names. They held that the only person who could do so is the legal representatives of the estate and not the beneficiaries.* This we think is in accord with the probate and administration law prevailing in this country.

[13] *In the present case the only issue that needs to be addressed by the court is whether the appellants, as the beneficiaries of the estate of the deceased have the locus standi to seek the declaratory relief as per prayer (c) of the claim.* In our view the case on point is the case of *Ooi Jim & Anor v. Ai Eit & Ors* [1977] 2 MLJ 105. In that case the first appellant had applied for a declaration that her husband was the lawful adopted son of Jaw Ing who had died intestate. The application was dismissed as it was held that she should first obtain letters of administration of her husband's estate. She then appealed to this court. Allowing the appeal, this court held that it was not necessary for the first appellant to take out letters of administration to bring the action which was primarily an action for a declaration as to the status of her husband. *The court stated that the question of taking out letters of administration would only arise when it became necessary for her to claim her share in the estate of the intestate.* No authority was cited by the court in support of its decision. But the following cases seem to support the finding of this court in Ooi Jim. First, the Singapore case of *Omar Ali bin Mohd. & Ors v. Syed Jajaralsadeq bin Abdulkadir Alhadad & Ors* [1995]3 SLR 388, which was cited to us by learned counsel for the appellants. In that case the plaintiffs sought declarations that the unexpired residue of the leasehold interest of 999 years in a property vested in the estate of the father of the plaintiffs (the intestate) and that the purported sale of the property by the first four defendants (who are the trustees of the estate of the holder of the reversion to the property) to the fifth defendant, in so far as it included the leasehold interest of the intestate's estate, was null and void. The first four defendants applied for security for costs on the ground that the plaintiffs were ordinarily resident out of jurisdiction. They claimed, *inter alia*, that the plaintiffs had no legal authority whatsoever to institute the present action; no one had the legal authority to act on behalf of the estate of the intestate until he or she had applied to the court for a grant of letters of administration. The learned assistant registrar allowed the application. *Chao Hick Tin J, allowed the appeal by the plaintiffs holding, inter alia, that the plaintiffs were not suing on behalf of the estate. They were suing in their own capacity as beneficiaries of the estate for a declaration to protect the property of the estate and to prevent the sale of the property to the fifth defendant from going through. This they had the locus standi to do as they had at least an equity in the estate of the intestate …* (emphasis added)

[38] Further, the Federal Court held as follows:

[19] *In the present case the action was commenced by the beneficiaries of the estate in order to regain the said land from the respondent whom they alleged had by fraudulent means transferred the land to himself. The respondent had also entered upon the land and damaged the fruit trees and demolished buildings found on the said land. Further, the said land is liable to be sold by the respondent to a third party. In that event the said land may be lost forever.* This becomes more urgent in view of the decision of this court in *Adorna Properties Sdn. Bhd v. Boonsom Boonyamit @ Sun Yok Eng* [2001] 1 MLJ 241, which confers immediate indefeasible title to a purchaser in good faith for valuable consideration.

A [20] Thus, *the appellants have had to act fast in order to protect and preserve the estate of the deceased. Therefore, on the facts of this case, we find, there exist special circumstances for the beneficiaries to commence legal action against the respondent qua beneficiaries for the purpose of protecting and preserving the asset of the estate. Quite apart from that we also hold that the beneficiaries in the present case have at least an equity in the estate of the deceased to entitle them to seek a declaratory judgment*.
B Thus, on the above grounds are agree with the learned counsel for *the appellants that the appellants in this case had the locus standi to commence this action at least for the limited purpose of protecting and preserving the asset of the estate.* (emphasis added)

[39] Thus, the exception and guidelines discussed in *Al Rashidy*'s case, can
C be summarised as follows:

(i) the nature of the claim needs to be ascertained before determining whether the beneficiary has the *locus standi* to bring an action without being the legal representative of the estate. In other words, without the letter of administration;

D

(ii) a beneficiary has no *locus standi* to apply to have his name registered as the registered owner of the land without the letter of administration;

(iii) a beneficiary has the *locus standi* to institute an action for declaratory relief to protect and preserve the estate of the deceased. The beneficiary
E has 'an equity' which entitled him to seek the remedy of a declaratory judgment; and

(iv) a beneficiary must show special circumstances in order to institute an action without the letter of administration.

F **[40]** In *Al Rashidy*'s case, the court observed that the beneficiaries of the estate commenced legal action to regain the land from the respondent who was said to have transferred the land to himself by fraudulent means. The appellant had to act fast to protect and preserve the estate of the deceased and the special circumstances that exist in the case, beside the fraudulent transfer were, the respondent had entered the land and damaged the fruits trees and
G demolished buildings found on the land. Further, and the land is liable to be sold by the respondent to a third party in which the land may be lost forever.

[41] This court in *Dato' Ramesh Rajaratnam v. Datin Zaleha Abd Rahman & Ors* [2014] 5 CLJ 669 had the opportunity to discuss and determine the
H same issue on *locus standi* and decided that without the letter of administration issued by the High Court no action can be taken for the benefit of the estate. The pertinent observation and conclusion by this court are as follows:

I [2] *The strict rule is that the letters of administration must be issued by the High Court to the administrator and/or administratrix before any action can be taken for the benefit of the estate ...*

…

The strict rule recently had been whittled down by the Federal Court to say if there are 'special circumstances' the administrator will have locus to proceed with the legal proceedings. (See *Al Rashidy Kassim & Ors v. Rosman Roslan* [2007] 3 CLJ 361). This is notwithstanding the strict provision of s. 39(1) of the Probate and Administration Act 1959 which states:

> 39(1) Where a person dies intestate his movable and immovable property until administration is granted in respect thereof shall vest in the Corporation in the same manner and to the same extent as it vests in the Probate Judge in England.

…

[4] When 'special circumstances' are relied on the *burden will be on the purported administrator to demonstrate on the issue of locus standi in the proceedings or by way of affidavits as the case may be before obtaining any orders from the court.* In essence, those who rely on special circumstances do not *per se* have a legal right such as administrator lawfully appointed by the court, with the sealed order extracted.

[5] *In light of Al Rashidy's case the courts will not ordinarily grant locus unless it can be shown that it was necessary and expedient to protect and preserve the interest of the deceased's estate.* In view of the statute which deals with probate and administration of estates, *the threshold for the purported administrator is very high to satisfy the locus standi test. It all depends on the facts, circumstances, urgency of the matter, etc.* The reason why letters of administration must be obtained before commencement of the action for the benefit of estate is well established and the jurisprudence need not be set out here. However, now the Rules of Court provides limited orders to be granted for the estate to be represented in an action or pending action as the court may think fit. (emphasis added)

[42] This court then held as follows:

[12] We have read the appeal records, the submissions of the parties in detail. We thank counsels for the comprehensive submissions. After much consideration to the submission of learned counsel for the respondents, we take the view the appeal must be allowed. Our reasons *inter alia* are as follows:

(a) *Malaysian courts have repeatedly given recognition to the rule that an administrator must have the sealed order of the High Court before getting entangled in any legal proceedings in court.*

(b) Quite recently in the case of *Al Rashidy Kassim & Ors v. Rosman Roslan* [2007] 3 CLJ 361, the Federal Court in reliance of the Singapore Court of Appeal's decision in *Wong Moy v. Soo Ah Choy* [1996] 3 SLR 398 had whittled down the strict rule expounded in *Ingall v. Moran* [1944] 1 KB 160 and the law set out in s. 39 of Probate and Administrative Act 1959 in exceptional cases where the purported administrator can show special circumstances. The threshold test set out by the Federal Court is high.

A [13] In our view, the facts of that case and the present case has no resemblance to attract the 'special circumstances' concept.

(emphasis added)

[43] Reverting to the present case, firstly, in the Originating Motion No. 25-54-03-2012 filed at Shah Alam High Court, plaintiff applied the alienation B of lease of the whole land to first, second, and third defendants to be set aside. The application was dismissed but on appeal to the Court of Appeal *vide* Civil Appeal No. B-01-506-11-2011 the appeal was allowed and the order of the Court of Appeal is as alluded to earlier. Plaintiff brought the action in his capacity as the beneficiary of his late mother, Yap Chin Moy.

C **[44]** Again, after the fifth defendant alienated the lease of the whole land to the first, second and third defendants, after the Court of Appeal ordered the fifth defendant to consider the application of the plaintiff and the first, second and third defendants, plaintiff filed the Originating Summons (OS) No. BA-24NCvC-593-07-2020 before the Shah Alam High Court. In this OS, D plaintiff's main relief *inter alia* is to have plaintiff's name registered as the registered owner of 1/2 undivided share of the land. This is reflected in paras. (d), (e), (f) and (g) of the OS as follows:

(d) bahawa susulan para (b) dan (c) di atas dan berdasarkan Perintah Mahkamah Rayuan bertarikh 23/4/2014 (Rayuan No. B-01-506-11- E 2012), *Defendan Keenam dalam masa tiga puluh (30) hari dari tarikh penerimaan perintah ini hendaklah membatalkan memorial ½ bahagian atas nama Defendan Keempat dalam hakmilik tanah tersebut dengan memorial atas nama Plaintiff sebagai pemilik 1/2 bahagian didaftarkan selaras dengan surat kelulusan bertarikh 5/1/2016* (untuk serahbalik dan pemberimilikan semula harta tersebut kepada simati) serta Notis F Borang 5A bertarikh 17/2/2016 (bagi bayaran premium dan lain-lain bayaran) yang dikeluarkan oleh Defendan Kelima kepada Plaintiff; dan

(e) bahawa bagi tujuan para (d) di atas, Plaintiff dalam masa enam puluh (60) hari daripada Tarikh perintah ini membayar kepada G Defendan Kelima bayaran premium dan lain-lain bayaran yang ditetapkan dalam Notis Borang 5A bertarikh 17/2/2016; dan

(f) bahawa lanjutan dari para (d) dan (e) di atas, **satu deklarasi bahawa Plaintiff adalah pemilik berdaftar 1/2 bahagian hartanah tersebut** selepas memenuhi segala obligasinya dan oleh itu, semua penghuni H yang menghuni hartanah tersebut diperintahkan untuk menyerahkan milikan kosong hartanah tersebut bebas dari sebarang bebanan dalam tempoh empat belas (14) hari dari perintah ini disampaikan kepada Defendan Keempat;

(g) bahawa sekiranya Defendan Keempat gagal dan/atau enggan mematuhi perintah di para (c) dan (f) di atas, Penolong Kanan I Pendaftar atau Timbalan Pendaftar Mahkamah Tinggi diberi kuasa untuk menandatangani segala dokumen serta mengambil segala

> tindakan yang perlu bagi Defendan Keempat **untuk menyempurnakan pindahmilik semula 1/2 bahagian hartanah tersebut kepada Plaintiff seperti dinyatakan di para (b) dan (d) diatas; dan** ` (emphasis added)

[45] Further, there is no issue of a fraudulent transfer of land in the present case which is the main basis for the court in *Al Rashidy* case as well as the Court of Appeal case of *Lai Wooi Giap v. Rosli Zakaria & Anor* [2020] 7 CLJ 477 relied upon by the plaintiff in contending that the action can be instituted by the beneficiary even without the letter of administration. In addition, the issue that plaintiff must act fast to protect and preserve the property of the estate does not arise here. In fact, plaintiff commenced the originating summons only after two years that the fifth defendant alienated the lease of the land to the first, second and third defendants.

[46] In this regard, we find that there are no special circumstances for plaintiff to commence the action as the beneficiary of the late Yap Chin Moy without the letter of administration to be the legal representative of the estate. Plaintiff, therefore, has no *locus standi* to commence the said action. The decision by the Federal Court in *Deraman*'s case and the principle laid down in *Al Rashidy* case with regard to the issue of *locus standi* are applicable in the present case and not in favour of the plaintiff.

[47] Thus, we also find that the High Court Judge fell into error in his finding that plaintiff has the *locus standi* to commence the action *vide* the Originating Summons No. BA-24NCvC-593-07-2020.

[48] On the issue of *res judicata*, although the High Court in Originating Motion No. 25-54-03-2012 had decided to dismiss the plaintiff's application, however, the decision was overturned by the Court of Appeal, and the plaintiff's subsequent action was based on the decision of the Court of Appeal as discussed earlier. Therefore, we are of the view that the principle of *res judicata* is not applicable in the present case.

Conclusion

[49] In the circumstances, the appeal by the first, second, third in appeal No. B-01(NCvC)(A)-19-01-2021 and fourth defendants/appellants in appeal No. B-01(NCvC)-10-01-2021 are allowed. The decision of the High Court dated 18 December 2020 is set aside. We also ordered costs of RM10,000 to be paid by the plaintiff/respondent for each appeal subject to allocator fee.